# A LEAGUE TO ENFORCE INDUSTRIAL PEACE

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## I

IN discussing "War and Human Progress," Viscount Bryce brings out the distinction between two schools of philosophical thinkers or historians. One of these schools lays stress on "the power of reason and of those higher and gentler altruistic emotions which the development of reason as the guide of life tends to evoke and foster" and finds in these tendencies "the chief sources of human progress in the past, and expects from them its further progress in the future." This school regards man "as capable of a continual advance through the increasing influence of reason and sympathy," and dwells upon "the ideas of justice and right as the chief factors in the amelioration of society." It, therefore, regards "goodwill and peace as the goal of human endeavor in the sphere both of national and of international life." The other school, less sanguine, insists "on the power of selfishness and of passion, holding these to be elements in human action which can never be greatly refined or restrained, either by reason or by sympathy;" that social order "can be secured only by force, . . . right itself is created only by force," and that "it is past force that has made what men call right and law and government." The tendency of this second school is "associated with the less rational elements in man—with passion and the self-regarding impulses which naturally attain their ends by physical violence." [1] The conflict between these two philosophies which Viscount Bryce finds is the fundamental provocative of the great international war, thoughtful persons find also is the fundamental provocative of industrial conflict. Inevitably the rational mind finds resemblances in industrial situations illustrating this same conflict of philosophies. In

[1] *Atlantic Monthly*, September 1916, pp. 301-2.

December 1914, Dr. Felix Adler, discussing "Militarism and Its Eulogists," said that while

> Self-defense has generally meant standing up for one's own rights . . . anyone who stands up for his rights, who separates in mind his right from the correlative rights of the other party, will inevitably glide over from right into might. He will begin by exercising right and presently change to the exercise of mere might. The only possible way to defend ourselves from that is to bear in mind that our right is an organ in the organism of rights. The great ethical error of the world till now has been that in righteous self-defense men have become most unrighteous, because in self-defense they have thought of their right as sundered from the right of others. Yet my right is but one blade of the shears, and the right of my fellow, even though he be the aggressor, is the other blade.

Applying this principle applicable to the international conflict, he finds it involved in the conflicts of laborers and employers.

> Laborers protest [he says] that their employer has been unjust, oppressive. They combine to defend their rights, and in this they are justified. But often the movement of protest, which began with a strike on behalf of right, degenerates into sheer assertion of might. The labor organization, if sufficiently strong, becomes dictatorial, peremptory, formulates demands inconsistent with sound business and with the self-respect of the employer. Now so long as the present industrial system continues, so long as there are employers, the employers have certain rights, because they have certain functions. Unduly to restrict their functions is to destroy their rights. Conversely, the employer may begin by resisting the tyranny of labor, and in so far as he does this we approve of his action. But presently, in defending his rights, he is apt wholly to forget the rights existing on the opposite side, in particular the indispensable right of association He announces his intention to crush the union of laborers, and thus in his blind assertion of the fractional right which is his, he destroys the integral right which is compounded of his and theirs.[1]

Similarly, Professor John Dewey writes that the neutral countries find themselves

[1] *The Standard*, December 1914, p. 125.

in the position of the public when there is a strike on the part of street-railway employees. The corporation and the employees fight it out between themselves, and the public suffers and has nothing to say. [He says that it is] the nations not at war [who] have the superior right in every case [because] in the existing situation they are the representatives of the normal interests of mankind, and so are in the right against even the contending party that with respect to other contenders is most nearly in the right. [Professor Dewey says that] our existing human intercourse requires some kind of a mechanism which it has not got [and that] instead of setting ourselves in deliberate consultation to institute the needed laws of the intercourse of nations [we wait] for new law to be struck out by the accident of clash and victory.[1]

It would seem, therefore, to be no vain prophecy to forecast that if the sentiment now behind the League to Enforce Peace should prevail and the outcome of the great international war should be the invention of new mechanism for making reason triumphant in international relations, we shall witness a rapid creation of institutions for subordinating industrial conflict to a reign of law. Viscount Bryce before the recent election emphasized

the immense importance of the declarations made by Mr. Wilson and Mr. Hughes as the leaders of the two great American parties. . . . Both have described in clear and strong terms the interest the American people have in the prevention of war and the duty which lies upon it as a peace-loving people to do its utmost for securing the safety of the world in future by a permanent combination for the restraint of aggression and the preservation of a general peace.[2]

Both candidates during the campaign pledged themselves to the principle of arbitration in industrial disputes. Chancellor von Bethmann-Hollweg recently said:

If at and after the end of the war the world will only become fully conscious of the horrifying destruction of life and property, then through the whole of humanity there will ring out a cry for peaceful

[1] *International Journal of Ethics*, April 1916, p. 320.

[2] *New York Times*, October 28, 1916.

arrangements and understandings which, as far as they are within human power, will prevent the return of such a monstrous catastrophe. This cry will be so powerful and so justified that it must lead to some result. Germany will honestly co-operate in the examination of every endeavor to find a practical solution, and will collaborate for its possible realization.[1]

In its recent report upon the car strike forwarded to the governor of the state,[2] the public service commission of the first district of New York declared:

The right of men freely to organize is a legal right no longer subject to question. The right of men freely to select spokesmen or advisers is a corollary of this right. The right to deal or to decline to deal collectively with an organization is likewise a legal right. So, too, the right to employ or to refuse to employ members of a certain organization is a legal right, justified morally in its exercise, according to the circumstances of each case. But the right of the state to have its public utilities operated safely, efficiently and continuously is also a legal right. Which of these rights is paramount? The rights of the people, or the rights of workers or employers? Whatever the application of these rights may be in private ventures, the right and the duty of the state in respect to its public utilities are clearly paramount. It is true that none of these rights, of the state, the worker or the employer, are arbitrable. But the adjustment of these rights so that each may be respected and properly balanced involves important considerations. While all of these parties have clear rights, the manner of exercising them is of the highest importance. The methods commonly accepted as moral are the methods of argument and persuasion, and the methods commonly condemned are those of coercion or oppression. Neither should the men coerce acceptance of their views, nor the company coerce acceptance of its views. Even if the company has the legal right to discharge union men, it is questionable whether it can justify itself on moral grounds.

With public utilities, where the necessities of the people depend upon their operation, it should not be permitted to any group of men, be they employees or employers, to inconvenience and bring distress upon the whole people for the purpose of securing acquiescence with

[1] *The Sun*, November 10, 1916.

[2] August 10, 1916.

its views. This is to substitute coercion arising out of the necessities of the public for persuasion as a method for securing recognition of concededly non-arbitrable rights.

It is a very significant indication of the movement for judicature in industrial conflict that in recent industrial controversy strong and fervent appeals for arbitration come first from one party and then from the other. In the cloak strike of 1916 it was the union which, in its appeal to the public, declared that it had

> been consistently opposed to a warfare in the industry [and believed] that the problems of the industry cannot be satisfactorily solved either by lockouts or strikes, but only through patient resort to the method of fairminded discussion, adjustment and democracy, [and that its only demand was] that both sides should submit their disputes to the arbitrament of an impartial body, whether that body be called a board of arbitration or a council of conciliation.

In the 1916 railroad situation it was the national conference committee of the railways which called upon the public to decide whether or not "this wage problem [should] be settled by reference to an impartial federal tribunal . . . or by industrial warfare." [1] On the other hand, in the case of the cloak strike, the manufacturers took the position that "We do not believe in outside bodies interfering in our affairs." [2] And in the case of the railway employees, the leaders of the brotherhood contended that they were

> in the grip of a power greater than we [themselves]. [Indeed, so they said, they were in the condition where] the veneer of civilization falls off, and you have the primeval man to deal with on both sides of the question . . . and, like the primeval man, both are prepared to appeal to the club. . . . In other words, they (the railroads) won't arbitrate where they fear, and there is nothing to arbitrate where there is no fear.[3]

[1] Advertisement, *New York Times,* June 26, 1916.

[2] Editorial, *New York Times,* May 27, 1916.

[3] *Minutes of Hearing before the Committee on Interstate Commerce,* U. S. Senate, pp. 25 and 28.

Accordingly, the men refused to arbitrate. These illustrations suffice to indicate that in our country the demand for arbitration of industrial disputes is not confined to labor or to capital, nor is the refusal to arbitrate confined to either. The slightly deaf gentleman, being asked concerning the points of the compass, replied "You can't tell. It shifts around up here," believing that he had been asked concerning the direction of the wind. If you happen to be in control of the situation, or think you are in control, you are not for arbitration. If you happen to be weaker than the other party, or think you are, you are a sturdy advocate of the principle of arbitration. There is no monopoly in this country of this shiftiness of position. A recent study of the experience of arbitration in Australasia discloses a similar experience there. When there was a large surplus of labor in Australasia and standards of wages were beaten down by the competition of the unemployed, the trade unions sought the establishment of wage boards and compulsory arbitration. When there was a shortage of workers and labor secured the upper hand, it was the employers who fought for the maintenance of arbitration.[1] It is significant that in this country now, when there is a labor shortage, the demand for industrial arbitration comes most strongly from the employers' group.[2] The manager of a large enterprise in St. Louis, we are told by a trade journal, "struck the nail on the head in advocating the appointment of a government commission, to adjust differences arising between labor and capital, just as the interstate commerce commission now adjusts troubles between the railroads and the shippers."[3]

Indeed, the Syndicalists seem to be the only industrial advocates who consistently decline arbitration.

Workmen quickly perceive that the labor of conciliation or of arbitration rests on no economico-judicial basis, and their tactics

[1] See *Arbitration and Conciliation in Australasia,* by M. T. Rankin. London, 1916. Ch. vi, Arbitration Court System.

[2] See Merchants' Association of New York plan to prevent the interruption of public utilities, *Greater New York,* September 25, 1916.

[3] *Daily Trade Record,* October 28, 1916.

have been conducted—instinctively perhaps—in accordance with this datum. Since the feeling and, above all, the vanity of the peacemakers are in question, a strong appeal must be made to their imaginations, and they must be given the idea that they have to accomplish a titanic task; demands are piled up, therefore, figures fixed in a rather haphazard way, and there are no scruples about exaggerating them; often the success of the strike depends on the cleverness with which a syndicalist (who thoroughly understands the spirit of social diplomacy) has been able to introduce claims, in themselves very minor, but capable of giving the impression that the employers are not fulfilling their social duty. It often happens that writers who concern themselves with these questions are astonished that several days pass before the strikers have settled what exactly they have to demand, and that in the end demands are put forward which had not been mentioned in the course of the preceding negotiations. This is easily understood when we consider the bizarre conditions under which the discussion between the interested parties is carried on.

I am surprised that there are no strike professionals who would undertake to draw up lists of the workers' claims; they would obtain all the more success in conciliation councils as they would not let themselves be dazzled by fine words so easily as the workers' delegates.

When the strike is finished the workmen do not forget that the employers at first declared that no concession was possible; they are led thus to the belief that the employers are either ignorant or liars. This result is not conducive to the development of social peace![1]

One of the things which appear to me to have most astonished the workers during the last few years has been the timidity of the forces of law and order in the presence of a riot; magistrates who have the right to demand the services of soldiers dare not use their power to the utmost, and officers allow themselves to be abused and struck with a patience hitherto unknown in them. It is becoming more and more evident every day that working-class violence possesses an extraordinary efficacy in strikes: prefects, fearing that they may be obliged to use force against insurrectionary violence, bring pressure to bear on employers in order to compel them to give way; the safety of factories is now looked upon as a favor which the prefect may dispense as he pleases; consequently he arranges the use

[1] *Reflections on Violence*, by Georges Sorel. Translated by T. E. Hulme; pp. 64, 65.

of his police so as to intimidate the two parties, and skilfully brings them to an agreement.

Trade-union leaders have not been long in grasping the full bearing of this situation, and it must be admitted that they have used the weapon that has been put into their hands with great skill. They endeavor to intimidate the prefects by popular demonstrations which might lead to serious conflicts with the police, and they commend violence as the most efficacious means of obtaining concessions. At the end of a certain time the obsessed and frightened administration nearly always intervenes with the masters and forces an agreement upon them, which becomes an encouragement to the propagandists of violence.[1]

Sorel says:

We cannot censure too severely those who teach the people that they ought to carry out the highly idealistic decrees of a progressive justice.[2]

There is not much difference between this philosophy of Sorel's and the point of view of many—Praise be the Lord! not all—successful employers and successful leaders of labor. The writer in the financial columns of a daily paper in New York appeals to business men to realize what it means to find the attitude of labor "like that of capital. Both take what they can get in the present, intent only upon the highest profit; both refuse to be responsible for the sequel, and neither one can spare the time to attend to the future."[3] Goethe saw this struggle for power, the unwillingness to surrender power and the unwillingness to be bound by power. The thirst for power would not let the ghost be laid:

> How often has it risen! Yes, and it will rise
> Ever and evermore! No man yields sovereignty
> Unto his fellow: none will yield to him
> Who won the power by force, and by force keeps his hold.
> For man, who cannot rule his own unruly heart,
> Is hot to rule his neighbor, bind him to his will.

[1] Sorel, *op. cit.*, pp. 69-70.

[2] *Ibid.*, p. 122.

[3] Garet Garrett, Finance-Economics, *New York Tribune*, October 23, 1916.

## II

But the " neutral " in industrial warfare, like the " neutral " in international warfare, is securing a standing in court. He is becoming an *amicus curiae*. In the recent milk strike in New York—a strike, be it observed, called not by the proletariat, but by capitalists, *i. e.*, farmers, owners of real estate—an attempt by capitalists to fix the price of milk by collective bargaining, upon the ground, indeed, that the farmer (a capitalist) was not earning a " living wage "—at the very moment that these capitalists were practising sabotage, overturning and emptying milk cans in the up-state highways, the babe in its mother's arms, dependent for its life upon this wasted milk, cried out its neutral protest. Wherefore the editors pass comment:

> The interests of no group in the community are more important than the public interest. The well-being of all should never be permitted to suffer because some special portion of the whole is seeking its own well-being in its own way. The public should never be put in the position of the " innocent bystander " at a street fight, who often receives the severest injuries.[1]

And they prophesy:

> The next great public problem is to work out the means by which organized groups of individuals, whether they represent labor and capital, or production and distribution, or merely rival interests in a single field, shall be compelled to settle their differences peaceably, to accord justice to each other, and to observe the rights of the people.

The " neutral " is more and more securing a hearing for his claims, not merely because of the disturbance of his immediate comfort, not merely because his breakfast bottle of milk is absent from his door-step, or his coal supply is shortened, or the street cars are delayed in running. There is cordial acceptance of the thought that there can be no interruption in the arterial service of the social organism without disturbing the whole system. Sometimes it is the lungs who try to make us

[1] *Independent*, October 23, 1916.

believe that they are the most important member, but more often quiet little members of the family, less vocal than the lungs, remind us with twinges of pain that it is not the noisiest member who can make the most trouble. In certain fields of industrial activity for a long time there has been clear acceptance of the principle that the rights of the parties involved are ever subordinate to the public interest. Notwithstanding the vast grant of power to the interstate commerce commission, enlightened railway executives appeal for grant of more power. No student of the decisions of the commission can fail to be impressed with the maze of discrimination, rebating and unfair practices left utterly without control on the part of the state or nation until this latent power was institutionalized. In the express rates case, Commissioner (now Secretary) Lane said:

> It is to be borne in mind that these carriers (meaning the express companies) remained for twenty years entirely without regulation as to interstate traffic after the railroads had become subject to this act, and that various efforts to remedy existing conditions made by individual carriers had failed because of lack of harmonious action and the inability of the government to compel them to adopt practices that were just and non-discriminatory.[1]

It is a similar "lack of harmonious action" between employers and employees and a similar "inability of the government to compel them to adopt practices that were just and non-discriminatory" that leaves us still in a condition of mitigated syndicalism. The railroad enterprises of the country were obliged under the pressure of government to work out the intricate problems of popular control in relation to technical administration. Walter Lippmann points out that "on the capacity of labor to develop an efficient government for itself hangs the decision as to how much responsibility the unions can afford to assume. It is the development of a *citizenship in industry* that the labor movement has before it. It will have

[1] *In re* Express Rates, Practices, Accounts, and Revenues. 24 I. C. C. 381, at 389.

to work out the intricate problem of popular control in relation to technical administration." [1] Business is under the control of government. Do the business men of the country realize that the federal trade commission will ultimately determine what constitutes the ethics of competition, and thus limit and determine the daily life of all trade? True, the act contains in itself but a very simple mandate, namely, "That unfair methods of competition in commerce are hereby declared unlawful." [2] Yet the commission is given the broadest powers to determine what constitute "unfair methods of competition in commerce" and to restrain by order those acts which it determines to be unfair. The commission is not controlled by legal precedents in its determination of what constitute unfair practices. It can establish entirely new precedents or itself follow more modern precedents. It can follow the recent Massachusetts case, in which the court adopted the principle that, since all property rights proceed from the state, they must be used for the common good of all the subjects of the state. In that case the definite question arose whether an association of granite workers could, by a system of fines, preclude any of its members from trading with one who was not a member and so destroy his business of quarrying granite. The court held that it could not, saying:

To what extent combination may be allowed in competition is a matter about which there is as yet much conflict, but it is possible that, in a more advanced stage of the discussion, the day may come when it will be more clearly seen and will more distinctly appear in the adjudication of the courts than as yet has been the case that the proposition that what one man lawfully can do, that any number of men acting together by combined agreement may do, is to be received with newly disclosed qualifications arising out of the changed conditions of civilized life and of the increased facility and power of organized combination, and that the difference between the power of individuals, acting each according to his preference, and that of an organized extensive combination may be so great in its effect upon

[1] *Drift and Mastery*, p. 97.

[2] *Federal Trade Commission Act*, sec. 5.

private and public interests as to cease to be simply one of degree and to reach the dignity of a difference in kind.[1]

A writer upon "The Morals of Monopoly and Competition" says that in this decision

we have a clear grasp of the modern situation and a clear recognition that changes in the conditions of civilized life call for equal changes in business methods and principles applicable to these changed conditions, that although it may be logically inferred that what one man may do singly he may also do jointly with others, results may prove this an invalid conclusion, and the difference in conditions may be so important as to make the inference impossible.[2]

Railroad men have already realized what public regulation means. Electric-light companies now know what it means to be regulated by public service commissions. Express companies now know that they must make rates subject always to revision by the interstate commerce commission. Business men generally will realize soon that, under the broad powers conferred upon the federal trade commission, they are subject to the same kind of governmental control. Business conduct which a decade ago would have been regarded as "good business" is now condemned not only as morally unsound, but as illegal and subject to criminal penalties, and this not merely as to cut-throat and predatory competition and the methods of the old-fashioned "octopus," but as to more modern practices, such as the misuse of trade names and the misrepresentation of the quality of an article. We have traveled a long distance from the philosophy of the decision in the great Mogul steamship case, wherein Lord Chief Justice Coleridge permitted himself to say:

It must be remembered that all trade is and must be in a sense selfish; trade not being infinite, nay the trade of a particular place or district being possibly very limited, what one man gains another loses. In the hand-to-hand war of commerce . . . men fight on

[1] Martell *v.* White, 185 Mass. 255, 259, 260.

[2] Homer Blosser Reed, *International Journal of Ethics*, January 1916, p. 273.

without much thought of others, except a desire to excel or defeat them. Very lofty minds, like Sir Philip Sidney with his cup of water, will not stoop to take an advantage, if they think another wants it more. Our age, in spite of high authority to the contrary, is not without its Sir Philip Sidneys; but these are counsels of perfection which it would be silly indeed to make the measure of the rough business of the world as pursued by ordinary men of business.[1]

In the same case Lord Justice Fry said:

I know no limits to the right of competition in the defendants—I mean, no limits in law. I am not speaking of morals and good manners. To draw the line between fair and unfair competition, between what is reasonable and unreasonable, passes the power of the courts. Competition exists when two or more persons seek to possess or enjoy the same thing; it follows that the success of one must be the failure of another—and no principle of law enables us to interfere with or to moderate that success or that failure so long as it is due to mere competition.[2]

Lord Justice Bowen said:

To say that a man is to trade freely but that he is to stop short at any act which is calculated to harm other tradesmen, and which is designed to attract business to his own shop, would be a strange and impossible counsel of perfection . . . . To attempt to limit English competition in this way would probably be as hopeless an endeavor as the experiment of King Canute.[3]

The abuses of railroad management, then, the evils of unregulated monopoly and competition, are not beyond the arm of the state. The capitalistic employer is in the grip of the law. In the interest of the "neutral," the weak needing the protection of the state is given help. Instead of the philosophy of "To him that hath shall be given," the more modern philosophy of "giving to each according to his needs" controls. Behind the workmen's compensation acts and the national child-labor law is the same great purpose. The arm of

[1] 21 L. R. Q. B. D. 544, at 553-4.

[2] 23 L. R. Q. B. D. 598, at 625-6.

[3] 23 L. R. Q. B. D. 598, at 615-16.

the state is stretched out to guard the worker and the little child. Conditions of public service and of private service are regulated in the interest of the worker and of the consumer.

> The new justice involves simply a subtler and more far-reaching analysis of the human situation. It involves a recognition of the wholly inescapable social interrelations. . . . The new theory of rights assumes that men together create their destinies, that rights grow as needs increase, and that these rights are not simply to be protected but to be nurtured and developed.[1]

When labor is the dominant power, is the weak to be left without protection of the law?

> In short, [as another writer puts it] during the last few years in America we have been developing with all our energy the highest art of all arts—the art of living together. I believe this to be "the one idea more powerful than any other" that is shaping the events of our time.[2]

## III

Why are business men resorting to commercial arbitration? The "art of living together" in business necessarily involves the elimination of human friction and the elimination of waste. Our judicial machinery is too cumbersome, too expensive and too provocative of hatred. According to modern understanding, it is not efficient. The national movement for efficiency in commerce and industry must soon bring us to a point where we shall look with shame and mortification upon our antiquated machinery for disposing of commercial controversy and upon our medieval methods for disposing of industrial controversy. Does it not concern the "neutral" that in three months upon a street-railway line there is a net deficit of $372,471 compared with earnings of $326,015 in the same period of the year previous—due to a street-car strike?[3] I have received from

[1] Harry Allen Overstreet, Philosophy and the New Justice, *International Journal of Ethics*, April 1915, p. 289.

[2] Ray Stannard Baker, *The New Republic*, December 5, 1914, p. 21.

[3] *The Sun*, October 27, 1916, reporting deficit on the Third Avenue system. In one month the revenue of another line dropped $608,065. *New York Times*, November 13, 1916.

L. W. Hatch, chief statistician of the New York state industrial commission, the following table of working time lost in strikes and lockouts in New York state for the ten years 1906-1915 inclusive:

WORKING TIME LOST IN STRIKES AND LOCKOUTS IN NEW YORK STATE

| *Year Ended September 30* | *Number of strikes and lockouts* | *Aggregate days of working time lost* |
|---|---|---|
| 1906 | 245 | 1,668,281 |
| 1907 | 282 | 1,724,260 |
| 1908 | 160 | 396,725 |
| 1909 | 176 | 1,061,094 |
| 1910 | 250 | 5,783,394 |
| 1911 | 215 | 2,360,092 |
| 1912 | 184 | 1,512,234 |
| 1913 | 268 | 7,741,247 |
| 1914 | 123 | 1,426,118 |
| 1915 | 104 | 868,838 |

This shows a total aggregate number of days of working time lost amounting to 24,542,283. If we assume an average of but $2 a day, this means a loss in this period in the state of New York in wages alone of $49,084,566. The recent cloak strike in New York is estimated to have cost the union $750,000 for strike benefits and other expenses and the manufacturers' association a like amount, if not more, while the loss in wages to the cloakmakers amounted to $3,000,000, and business and profits to the manufacturers far exceeded this sum.[1]

Professor Wigmore says:

> Few laymen, and fewer lawyers, stop to reflect that the system of legal justice keeps changing slowly, from epoch to epoch, in its contents,—the subjects of its rules and dispensations.

Professor Wigmore sees in the wings a new body of American law developing in the field of industrial controversy:

> Spontaneously, in our own country, work in the same field has begun. . . . Lawyers should awaken to this coming enlargement of the field of systematic justice. . . . The significant thing is that general principles are beginning to be formulated. And the moment you

[1] Report of Morris Hillquit to Mayor Mitchel, *Daily Trade Record*, August 5, 1916.

have general principles, used for deciding particular cases, you have justice in the form of law, as distinguished from the arbitrary justice of a Turkish caliph, or from private struggle decided by private force.[1]

When the balance sheet of the great war is made up, and we shall all have to foot the bill, the inefficiency and wastefulness of our medieval methods for settling industrial controversy will become intolerable. We shall soberly come to the reflection that in each instance the root of the evil is a fundamentally wrong philosophy. When we are stirred up, when public opinion is screwed up to the sticking point, we shall demand new law and new institutions.

When we arrive at this point, we shall find much to learn from a study of the evolution of our present legal institutions. Sir Frederick Pollock has graphically described the general impotence of the English state in the administration of justice during the Anglo-Saxon period:

Rigid and cumbrous as Anglo-Saxon justice was in the things it did provide for, it was, to modern eyes, strangely defective in its lack of executive power. Among the most important functions of courts as we know them is compelling the attendance of parties and enforcing the fulfilment both of final judgments and of interlocutory orders dealing with the conduct of proceedings and the like. Such things are done as of course under the ordinary authority of the court, and with the means constantly at its disposal; open resistance to judicial orders is so plainly useless it is seldom attempted, and obstinate preference of penalties to submission, a thing which now and then happens, is counted a mark of eccentricity bordering on unsoundness of mind. Exceptional difficulties, when they occur, indicate an abnormal state of the commonwealth or some of its members. But this reign of law did not come by nature; it has been slowly and laboriously won. Jurisdiction began, it seems, with being merely voluntary, derived not from the authority of the state but

[1] A New Field for Systematic Justice, 10 *Illinois Law Review*, No. 8, March 1916. Editorial Notes, pp. 592, 593, 594, 595. See also The Development of Government in Industry, by Earl Dean Howard, 10 *Illinois Law Review*, No. 8; The Need for Industrial Jurisprudence, by Walston Chubb, *The Standard*, March 1916; A New Province for Law and Order, by Henry Bournes Higgins, *Harvard Law Review*, vol. xxix, no. 1.

from the consent of the parties. People might come to the court for a decision if they agreed to do so. They were bound in honor to accept the result; they might forfeit pledges deposited with the court; but the court could not compel their obedience any more than a tribunal of arbitration appointed at this day under a treaty between sovereign states can compel the rulers of those states to fulfil its award. Anglo-Saxon courts had got beyond this most early stage, but not very far beyond it.

The only way to bring an unwilling adversary before the court was to take something of his as security till he would attend to the demand; and practically the only things that could be taken without personal violence were cattle. Distress in this form was practised and also regulated from a very early time. It was forbidden to distrain until right had been formally demanded—in Cnut's time to the extent of three summonings — and refused. Thus leave of the court was required, but the party had to act for himself as best he could. If distress failed to make the defendant appear, the only resource left was to deny the law's protection to the stiff-necked man who would not come to be judged by law. He might be outlawed, and this must have been enough to coerce most men who had anything to lose and were not strong enough to live in rebellion; but still no right could be done to the complainant without his submission. The device of a judgment by default, which is familiar enough to us, was unknown, and probably would not have been understood.

Final judgment, when obtained, could in like manner not be directly enforced. The successful party had to see to gathering the "fruits of judgment," as we say, for himself. In case of continued refusal to do right according to the sentence of the court, he might take the law into his own hands, in fact wage war on his obstinate opponent.[1]

Is this not an accurate photograph of the existing condition of the law of our present dealing with industrial controversy? No power by which parties can be compelled to arbitrate their differences. No power, even after they have submitted, to compel them to observe the awards. The parties left to voluntary agreement or to fighting it out among themselves. Like the Anglo-Saxon litigant, no one can bring any other one into court. Violence in both cases the outcome. In the absence

[1] *Expansion of the Common Law*, pp. 145-6.

of law, resort to force. The public service commission of the first district, reporting upon the recent car strike in the city of New York, brings sharply to the attention of the public this weakness in the existing law. In the case of each side, it finds voluntary agreements to arbitrate violated without remedy:

There is no doubt that men have the right to refrain from working and any rule that requires a man to work against his will is in the nature of slavery. On the other hand, there are positions of public service that require the performance of instant duty; for example, the policeman or the fireman may not throw up his job while on duty, though he may resign his position.

It may very well be considered at this time whether or not the principle should be extended to the extent of saying that it is against the public interest that men employed on railroad or other public utilities may, without notice, exercise their right to quit their jobs in a group, thus crippling if not totally arresting the operations of public utilities, to the great damage of the public. We are not undertaking now to suggest what remedy, if any, may be just and practicable, but it is already the law that the matter of the operation of public utilities is a matter of state regulation. Is the quitting of the service a matter for state regulation?

## IV

So far as public utilities are concerned, we cannot escape the logic that the regulation of rates and of service carries with it the duty to regulate conditions and rewards of employment. It is no longer open to dispute that Congress, in so far as relates to matters of interstate commerce, and the states, in so far as relates to matters of intrastate commerce, have the power. Mr. Justice Hughes, writing the opinion of the United States Supreme Court, in 1910 said:

By virtue of its power to regulate interstate and foreign commerce, Congress may enact laws for the safeguarding of the persons and property that are transported in that commerce, and of those who are employed in transporting them. Johnson *v.* Southern P. Co., 196 U. S. 1, 49 L. ed. 363, 25 Sup. Ct. Rep. 158; Adair *v.* United States, 208 U. S. pp. 177, 178, 52 L. ed. 443, 444, 28 Sup. Ct. Rep.

217, 13 A. & E. Ann. Cas. 764; St. Louis I. M. & S. R. Co. *v.* Taylor, 210 U. S. 281, 52 L. ed. 1061, 28 Sup. Ct. Rep. 616; Chicago, B. & Q. R. Co. *v.* United States, decided May 15, 1911 (220 U. S. 559, *ante*, 582, 31 Sup. Ct. Rep. 612). The fundamental question here is whether a restriction upon the hours of labor of employees who are connected with the movement of trains in interstate transportation is comprehended within this sphere of authorized legislation. This question admits of but one answer. The length of hours of service has direct relation to the efficiency of the human agencies upon which protection to life and property necessarily depends. This has been repeatedly emphasized in official reports of the interstate commerce commission, and is a matter so plain as to require no elaboration. In its power suitably to provide for the safety of employees and travelers, Congress was not limited to the enactment of laws relating to mechanical appliances, but it was also competent to consider, and to endeavor to reduce, the dangers incident to the strain of excessive hours of duty on the part of engineers, conductors, train despatchers, telegraphers, and other persons embraced within the class defined by the act. And in imposing restrictions having reasonable relation to this end there is no interference with liberty of contract as guaranteed by the constitution. Chicago, B. & Q. R. Co. *v.* McGuire, 219 U. S. 549, *ante*, 328, 31 Sup. Ct. Rep. 259.[1]

Indeed, the Adamson eight-hour bill is based upon the theory that Congress, having the power to regulate the service, has power to fix the hours of labor or the compensation. In accepting the Adamson bill, the railway brotherhoods bowed before the power of the state. This phase of the incident has not been emphasized. The brotherhoods have not always been ready to go to Congress for legislative regulation of hours of labor. In one sense what they accomplished may be regarded as a victory, but in another may be regarded as a setback. There was clear recognition that, in the development of public opinion, the time had arrived when the public's rights were paramount. Under the title, "The Public Welfare Supreme," *The Independent* says that labor organizations had been

repeating the blunder that far more powerful organizations have

[1] Baltimore & Ohio R. Co. *v.* Interstate Commerce Commission, 221 U. S. 612, at 618-619, 55 L. ed. 878, at 882-3.

made from time to time since the Christian era began, and for which they have severely suffered. [This blunder, it says, is that] of asserting the alleged right of any organization whatever to exist on its own terms, irrespective of the welfare of the general public as interpreted by the sovereign people. [This blunder, it says, was made by the Roman Catholic Church, by the Mormon Church, and by the great corporate business interests, the last] to be brought under more and more strict control by state legislatures and courts, the national Congress and the United States Supreme Court. [But] the right of the public to enjoy civilized order, as Chairman Straus of the public service commission admirably put it the other day, is the supreme right. At all costs it must be maintained; by overwhelming force if necessary.[1]

The fundamental principle that the rights of employees, like the rights of stockholders, are subordinate to the rights of the public, in the operation of public utilities, is already imbedded in the law of the state of New York. By section 26 of the public service commission law every railroad corporation, person or common carrier is required to furnish "such service and facilities as shall be safe and adequate and in all respects just and reasonable," and is required to furnish such services at charges that "shall be just and reasonable and not more than allowed by law or by order of the commission having jurisdiction and made as authorized by this chapter." Section 49, authorizing the commission to fix rates and service, says that if the commission finds that the maximum rates, fares or charges

are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, *the commission shall with due regard among other things to a reasonable average return upon the value of the property actually used in the public service and to the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed*, notwithstanding that a higher rate, fare or charge has been heretofore authorized by statute, and shall fix the same by order.

[1] Vol. 88, no. 3539, October 2, 1916, p. 6.

Under section 55, for the purpose of approving issues of stock, bonds and other forms of indebtedness, the commission must be satisfied that

> the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order, and that except as otherwise permitted in the order in the case of bonds, notes, and other evidence of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(Throughout the act will be found provisions covering other public utilities.) It is true that heretofore it has been assumed that, in determining the reasonableness of rates or the reasonableness of stock or bond issues, the public service commission was not required to take into account standards of wages or hours of labor, or the manner in which employees in the service were required to perform the service. There is, however, no escape from the logic that if a commission is to regulate the safety of the service, the reasonableness of the rates, and the justifiability of stock or bond issues, it must of necessity consider the wages and hours of those who perform the service quite as much as it must consider the interest, the dividends and the adequacy of the purely mechanical parts of the utility. In the United States Senate on August 30 last, in the discussion of the various existing statutory methods for compulsory or voluntary arbitration of industrial disputes, taking the position that it is not within the power of Congress to compel a man to work against his will, Senator Cummins said:

> I have little doubt that it is within our power to make unlawful a combination of employees looking to a strike in concert. We could not simply make it unlawful to strike. All that we could possibly make unlawful would be the combination or the conspiracy to strike.[1] [And] it is apparent that these disputes which so vitally affect the whole body of the people should be settled, if possible, by an impartial tribunal, and I do not think of it as an arbitration; I think of it as a court, composed of men of the highest character and greatest

[1] *Congressional Record*, August 30, 1916, p. 15677.

attainments; a court composed wholly of members who have no possible interest in the controversy, and who have the same sense of high responsibility which we expect of men chosen to exercise the judicial office. It must be composed of men in whom the entire country has confidence, of humanitarians who are looking constantly for the true pathway to a better civilization. If we can secure such a court, the strike, in concert or combination, may, for a time and in a degree, be subordinated to its judgments. [Coming directly to the matter of disputes upon the railroads of the country, Senator Cummins said:] Undoubtedly Congress could prescribe maximum hours of work upon railways engaged in interstate commerce.[1]

Asked specifically by Senator Norris if he thought that Congress would have the constitutional right to fix the compensation as well as the hours, he said:

Unquestionably Congress has authority to prescribe both minimum and maximum wages to be paid by such railway companies. It is true that regulation of this character might sometimes be overthrown in the courts if challenged as unreasonable or arbitrary, because there is no well-established standard for compensation in the various occupations of life.[2]

In coming to the opinion that the power of the government, national and state, to regulate public utilities in the matter of service and rates includes the power to determine the wages which shall be paid and the hours within which the work may be performed, the conservative senators do not hesitate to accept the conclusion that this would necessarily involve the regulation of the salary of officers. Senator Cummins, recognizing fully the power of Congress to regulate wages and hours upon the railroads, questions only the power of Congress to delegate this power to a commission.[3] But certainly when Congress can delegate to a trade commission the determination of what in each case constitute "unfair methods of com-

[1] *Congressional Record*, Aug. 30, 1916, p. 15679. [2] *Ibid.*, p. 15679.

[3] The following discussion between Senators Norris and Cummins is instructive:

MR. NORRIS. Does the Senator think there is any greater constitutional authority conferred upon such a tribunal as he has been describing to fix, not necessarily the maximum and minimum, but the absolute compensation of var-

petition," it can delegate to a commission the power to determine what is "a fair and reasonable wage" or what is "a fair and reasonable working day." Every lawyer knows that a contract of hiring which contains no definite sum for compensation is a contract for *quantum meruit*, and the jury determines according to the circumstances of the case, and possibly upon the evidence of experts, what is "fair and reasonable compensation." I do not believe the point made by Senator

ious kinds of employees than there is conferred upon the same tribunal the right to fix a rate that shall be charged, of which the salaries of all the employees and officials must be one of the component parts?

MR. CUMMINS. There is a little difference in the constitutional authority. From time immemorial the standard which is applied to test the validity of a rate imposed by a common carrier has been known theoretically at least. When we created the interstate commerce commission we gave to this commission the standard which had been for centuries the law with regard to the transportation of persons and property by common carriers, and the courts have held that that is a sufficiently definite standard to warrant the delegation of power which the interstate commerce law involves.

Now, mark you, I am not speaking of Congress; but when Congress would attempt to delegate the power to fix wages, what is the standard, what is the rule? What is to determine whether a man ought to be paid $2 a day or $5 a day or $10 a day? I do not know of any standard at all.

MR. BORAH. Would the phrase "a fair and reasonable wage" be any more definite or less definite than "unfair competition" or "a reasonable rate"?

MR. CUMMINS. I think it would be very much less definite. Both unfair competition and reasonable rates for the carriage of persons or property have become fairly well established. But it is not necessary for me to argue the matter. If the power exists, it is to be exercised through regulation and is not involved in the subject I am discussing. You cannot compel a man to work for any wage that the commission may fix.

* * * * * * * *

MR. NORRIS. I concede the point the Senator has made. It was not the object of my question to contest that, but I was wondering if the board or tribunal, or whatever it is the Senator has been describing, has the authority to fix a rate and a part of that rate is made up of the salaries that the president of a road draws and the brakemen draw, that being a part of the rate that it is considered they have the constitutional right to fix, and we have the constitutional right to provide, if we define it as we did in the power to fix the rate, that the salaries of all the employees and officials should be reasonable, that being a part of the rate, why could they not fix those rates; and when they were fixed would they not partake much of the same as a governmental position, and a strike would probably be unknown in regard to it if they controlled the entire situation?—*Congressional Record*, Aug. 30, 1916, p. 15680.

Cummins is sound. If Congress has the power, there is no difficulty in delegating that power to a commission. There is, as I see it, no constitutional difficulty in the way of regulating conditions of employment upon public utilities. We should not forget that there was a time when there was a public policy supporting yet broader and more restrictive regulation of wages and conditions of employment. Beale and Wyman, going back to a review of governmental regulation of business during the late Middle Ages, say:

Not only did the law regulate business indirectly through the courts, Parliament itself frequently regulated prices of the necessaries of life by direct legislation. The great staples like wool and food were habitually regulated in this way, and the employment and price of labor was a subject of statutory provision. Thus, in 1366, Henry III, after reciting former statutes to the same effect, regulated the price of bread and ale according to the price of wheat and barley, and forbade forestalling, that is, cornering the market. In 1344 the ordinances fixing the export price of wool were repealed after some years of trial. In 1349 all laborers were obliged to serve for the customary wages; and "butchers, fishmongers, regrators, hostelors (*i. e.*, innkeepers), brewers, bakers, poulterers, and all other sellers of all manner of victuals" were bound to sell for a reasonable price. These statutes continued in force throughout the Middle Ages, and until the settlement of America.[1]

It is true that Section 6 of the Clayton Act reads as follows:

That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under anti-trust laws.

In discussing this amendment in the light of the decisions already rendered, Ex-President Taft, addressing the American

[1] *Railroad Rate Regulation*, p. 7.

Bar Association in 1914, said that this provision "was not intended to make members of such associations (*i. e.*, labor, agricultural, *etc.*) a privileged class and free from the operation of general laws" and that in all probability "when the statute is construed by the courts it will keep the promise of the labor leaders to the ear and break it to the hope of the ranks of labor."

Since Professor Taft delivered this legal opinion, the courts have been called upon to pass upon this section, and the recent decision of Dowd *v.* United Mine Workers of America, 235 Fed. Rep. 1, indicates that Mr. Taft was not far wrong in his conclusions. In that case the court held that the United Mine Workers of America, though unincorporated, were not only subject to the provisions of the Anti-Trust Act, but that they could be sued as parties for treble damages; and that, if by conspiracy and combination they injured the business and property of the coal companies, the fact that their unlawful acts did not relate directly to interstate commerce is not a defense. This decision, taken in connection with the decision of the supreme court of Massachusetts holding unconstitutional a similar provision of the state law of Massachusetts [1] to the

[1] Bogni *v.* Perotti, 224 Mass. 152, 112 N. E. 853. The provisions in St. 1914, C. 778, Sec. 2, declaring that "in construing this act" the right to labor and to make and modify contracts to work "shall be held and construed to be a personal and not a property right" and prohibiting the granting of an injunction to enforce such a right "where no irreparable damage is about to be committed upon the property or property right of either" employee or employer, are unconstitutional and void, for the reason that they deprive those employed in labor of "the equal protection of the laws" guaranteed by the federal constitution and by the equivalent provision in the Massachusetts bill of rights. ". . . the power of courts to afford injunctive relief cannot be impaired by the legislature in such a way as to prevent its use in favor of one property owner, when it is preserved for the benefit of other property owners." In that case, Bogni and others, as members of the General Laborers' Industrial Union No. 324 of the Industrial Workers of the World, brought suit against the Hod Carriers Building and Common Laborers' Union, Local 209, affiliated with the American Federation of Labor. The contest was between two labor unions seeking similar employment for their members as laborers in the building trades. The court said (p. 156): "The right to make contracts to earn money by labor is at least as essential to the laborer as is any property right to other members of society. If as much protection is not given by the laws to this property, which often may be the owner's only substantial asset,

effect that labor is not a commodity, must bring the enlightened and intelligent labor leaders of the country to the realization that by no legislative process can they escape the consequences of any restraint of trade which, if committed by a business association, would be in violation of the law. Under the law, as the Attorney General of the United States said in the Northern Securities case, "whether it is a mob, a monopoly, or a sand bank," whatever interferes unlawfully with trade or commerce is subject to the law. Interpreting the Trade Commission Act in the light of the Dowd case and Loewe *v.* Lawler,[1] there would seem to be no reason why employers should not apply to the trade commission in cases of boycotts or strikes for relief of the same character that competitors now secure against unfair competition.

## V

Our law is not impotent. On the contrary, it is all-powerful. Students of judicial precedents have repeatedly pointed out the recent change in judicial opinion. "Only twenty-five years ago the general feeling as to every sort of industrial relation was that it was better to leave all alone, that it was better to leave people to work out their own salvation." [2] Today we apply the rule of *salus populi suprema est lex* to all property clothed "with a public interest," and "Property becomes clothed with a public interest when it is used in a man-

as is given other kinds of property, the laborer stands on a plane inferior to that of other property owners. Absolute equality before the law is a fundamental principle of our own constitution. To the extent that the laborer is not given the same security to his property by the law that is granted to the land owner or capitalist, to that extent discrimination is exercised against him." These two principles—that the right to make a contract is a property right and that equal resort to the courts must be accorded to all men—have been completely ignored in the formulation of its legislative program by the American Federation of Labor. Like the employers spending energy in an effort to destroy trade unionism, this effort to destroy fundamental principles of American law is futile. The energy should be otherwise utilized—in both instances.

[1] 208 U. S. 274.

[2] Wyman on State Control of Public Utilities, *Harvard Law Review*, June 1911. Also in Orth's *Readings on the Relation of Government to Property and Industry*, p. 286.

ner to make it of public consequence and to affect the community at large." [1]

The famous Peel Splint opinion [2] is like a blinding headlight in the darkness of a new highway. It may dazzle, but it lights the way:

We base the decision in this case: First, upon the ground that the defendant is a corporation in the enjoyment of unusual and extraordinary privileges which enable it and other similar associations to surround themselves with a vast retinue of laborers, who need to be protected against the fraudulent or suspicious devices in the weighing of coal or payment of wages for labor. Secondly, the defendant is a licensee, pursuing a vocation which the state has taken under its general supervision for the purpose of securing the safety of employees, by ventilation, inspection and government report, and the defendant, therefore, must submit to such regulations as the sovereign thinks conducive to public health, public morals and public security. We do not base this decision so much upon the ground that the business is affected by the public use, but upon still higher ground, that the public tranquillity, the good and safety of society, demand, where the number of employes is such that specific contracts with such laborers would be improbable, if not impossible, that in general contracts justice shall prevail as between operator and miner; and, in a company's dealings with a multitude of miners with which the state has by special legislation enabled the owners and operators to surround themselves, that all opportunities for fraud shall be removed. The state is frequently called upon to suppress strikes; to discountenance labor conspiracies; to denounce boycotting as injurious to trade and commerce; and it cannot be possible that the same police power may not be invoked to protect the laborer from being made the victim of the compulsory power of that artificial combination of capital which special state legislation has originated and rendered possible. It is a fact worthy of consideration and one of such historical notoriety that the court may recognize it judicially, that every disturbance of the peace of any magnitude in this state since the civil war has been evolved from the disturbed relations between powerful corporations and their servants and employees. It cannot be possible that the

[1] Munn *v.* Illinois, 94 U. S. 113.

[2] Peel Splint Co. *v.* State, 36 W. Va. 802. Reasoning of the case affirmed and language quoted with approval by the U. S. Supreme Court in Knoxville Iron Co. *v.* Harbison, 183 U. S. 13, 22 Sup. Ct. 1.

state has no police power adequate to the protection of society against the re-occurrence of these disturbances, which threaten to shake civil order to its very foundations. Collisions between the capitalist and the working man endanger the safety of the state, stay the wheels of commerce, discourage manufacturing enterprises, destroy public confidence and at times throw an idle population upon the bosom of the community.

The law is ready. It is public opinion that dallies. The state has power to take action "when the contestants are not able to settle their controversies between themselves, and the public peace and welfare are being jeopardized, in stepping in and prescribing the rules and regulations under which the industries shall be conducted." [1] The field of governmental interference is being constantly extended. Business and occupations formerly unknown or of little importance are now being regulated and their charges and actions controlled. When any industry secures sufficient control to disturb the public peace or its owners are constantly requiring the aid of the state for protection, the business to that extent becomes affected with a public interest.[2] The right of regulation now legally covers electric light companies operating upon the public streets, railroad bridge companies, telephone and telegraph companies, water companies, sewerage companies, irrigation and canal companies, grain elevators, warehouses, mines, insurance and banking. Is milk or coal a property "clothed with a public interest"?[3]

[1] Judge Alexander A. Bruce of the Supreme Court of North Dakota, *Michigan Law Review*, June 1909. Also in Orth, *op. cit.*, p. 307.

[2] *Ibid.*, pp. 300, 301 (Orth).

[3] See the Donnelly Act, sec. 340, General Business Law, New York. "Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is or may be created, established or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void."

## VI

Labor recognizes its subjection to the law. Before the Senate committee on interstate commerce, Mr. Gompers testified:[1]

SENATOR CUMMINS. I take it you do not object to responsibility under the law for an unlawful act in some form or other?

MR. GOMPERS. Certainly not.

SENATOR CUMMINS. That is, every man, whether alone or whether in association with others, if he commits a wrong, ought to respond for that act either to the public in a criminal prosecution or to the person who was injured by his unlawful act?

MR. GOMPERS. Unquestionably.

SENATOR CUMMINS. That is fundamental, and that leads me to a little further inquiry of you upon a subject a little more fundamental even than the anti-trust law. You are familiar with what is known as the Debs case?

MR. GOMPERS. Fairly well, sir.

SENATOR CUMMINS. There the complaint was, as I remember, that certain persons had forcibly, physically restrained the instrumentalities of commerce; that is, prevented commerce from being carried on. Now, entirely apart from the law through which it would be worked out, do you think that there ought to be prohibitions against acts of that sort?

MR. GOMPERS. There are, without the Sherman anti-trust law.

SENATOR CUMMINS. Of course you think there ought to be prohibitions against such acts?

MR. GOMPERS. Unquestionably; any acts which in themselves are unlawful.

The *New York Times* reports that on November 5 the Attorney-General authorized the following statement of his department's activities: "The Department of Justice is investigating the recent abnormal and suspicious increases in the prices of various necessaries of life, especially coal. Wherever any such increase is found to have been due to conspiracy or other unlawful action the department will invoke against the offenders the severest penalties which the law prescribes." See also article headed, Suspect Conspiracy in High Coal Prices, p. 20 of same issue of *Times*, November 6, 1916.

[1] *Report of Hearings before the Committee on Interstate Commerce, U. S. Senate*, Sixty-second Congress, 1911-12. Pursuant to Senate Resolution 98. Pp. 1727-1765. Also in Orth, *op. cit.*, pp. 610-611.

Capital recognizes the clear right of labor to organize. Mr. Emery, speaking for the National Association of Manufacturers and approximately three hundred organizations of employers, said at the same hearing: [1]

I, and all I represent, are firm believers in the right of men to organize for the protection of their hours, labor, and working conditions. Many thousands of men employed by my clients are members of labor organizations of all kinds, and we do not and never have questioned their right to form unions and by legitimate action enforce their demands. We ask for no other restrictions for them than the same law places on all other citizens.

In theory, both sides agree. Shall they be permitted to escape from this harmony of thought in their practice?

In those industries where the costliness to the worker of the strike and lockout has been graven upon the memories of the workers by hard and bitter suffering, there is clear appreciation of the value of stable and uniform administration of the law of the industry.

The most recent report of the government (U. S. Department of Labor, Bureau of Labor Statistics, *Bulletin* 198) reviewing Collective Agreements in the Men's Clothing Industry, contains the following:

Under these agreements a due process of law has been substituted for the arbitrary and irresponsible rule of the foreman in the adjustment of all differences, and with the institution of this due process of law there has developed among the workers a feeling of security under the law, in place of the feeling, formerly prevalent among them, of uncertainty, of fear, and of absolute helplessness.[2]

[1] *Report of Hearings before the Committee on Interstate Commerce, U. S. Senate,* Sixty-second Congress, 1911-12. Pursuant to Senate Resolution 98. Pp. 2072-2104. Also in Orth, *op. cit.,* p. 618.

[2] One of the union representatives writes:

"To fully appreciate, and to be able to explain in what ways the people have benefited by the agreement, I must refer back to the time when no agreement was in existence.

"I used to work in shop No. 3, and I must say that the foreman of said shop is a kind person. My work during the seven years was very seldom criticized, if at all, but I was considered a 'smart man,' consequently kept re-

We may well follow today the example of Cavour, who, in the time of Italy's greatest crisis,

sponsible for some little trouble that happened in the sections near me. Once a section of men picked enough courage to stand up and ask the foreman for an increase; for such action their leader, who was revealed by one of the men, was immediately discharged and even denied the privilege to come for his hat and coat in the shop, which were brought to him outside. He was such a very nice, quiet, sociable fellow that it broke my heart to see him go in such a fashion, but the only thing I could do was to feel sorry for him. A few hours later I was called by the foreman and accused of being the instigator of those people; when I protested that I did not know anything about it, and that I could not have been the instigator as I couldn't speak their language (Lithuanian), I was told that I was a 'smart man,' that I knew everything, and that at least I should have notified him. Finally, I was asked to resign my position; I was a plain workingman and I expected the same treatment that the other fellow had received a few hours before. While I was getting ready very reluctantly to go home, reluctantly, not for the job, though I needed it, but because I thought my staying in the shop was necessary, the foreman had a conversation with the informer and had been told that I was not mixed up in the matter at all, so the foreman changed his mind and asked me to remain, told me that I was a good man and that he believed every word I had said.

"Today when a section is dissatisfied a complaint is filed with the shop chairman, who tries first to adjust it with the foreman or manager. If he can not succeed, he reports to the deputies of the workers and a joint investigation is made with the deputy of the company. In the event the deputies fail to reach a settlement, the case is reported to the trade board, and finally, if necessary, to the board of arbitration. The chairmen of the shops may now speak for any of the workers without being told to mind their own business. The fear of being wrongfully discharged has disappeared, because of the right to demand redress. Wages or prices can not be reduced; if attempted to, the price committee, a creation of the trade board, will be there and investigate the case."

Compare this with the conditions in the New York cloak industry, after the "protocol" system of arbitration was recently abrogated. The workers now complain:

"This agreement may be a model as far as the manufacturers are concerned, because there are practically no provisions for enforcement of same, but the workers having promises on paper but knowing full well that the right to hire and discharge is practically absolute under the new agreement, that equal division of work is not even mentioned therein, and that the manufacturer if he wants to discriminate against an active union man could do so with immunity, cannot do anything else but express their dissatisfaction with it.

"We expect to take up this subject from time to time, but let us hope that this model agreement will be of short duration unless properly amended so as to make it a real contract instead of a one-sided affair."—Editorial Note, *The Ladies' Garment Cutter,* October 28, 1916.

rises and compresses the needs of Piedmont and Italy into a single sentence. Casting aside all petty demands for changes in detail, he insists that the king be asked "to transfer the discussion from the perilous arena of irregular commotions to the arena of legal, pacific, solemn deliberation." [1]

## VII

The desideratum is the least possible regulation by the government and the utmost freedom to the parties to come together. We should encourage the interested parties to negotiate and agree, subject only to the right of the third party, the public, to intervene at points where the public interest may be endangered. Collective bargaining under the sanction of the law furnishes this free opportunity for negotiation. Joined with clear right of review in case of injury to the public, and opportunity for appeal in case of deadlock, it opens up a hopeful avenue of escape from our present chaos.[2]

Employers generally are recognizing that the human relations between them and the workers in their plants are a vital factor in the efficiency of the plant. A recent advertisement says: "The quality of every manufactured product depends upon the workmanship. Satisfied labor insures high quality in the output of any plant." And this concern is pleased to advertise the fact that four hundred satisfied workers say:

As employes, we feel that the . . . . . Company has endeavored to make our working conditions and wages as satisfactory as their business has warranted. We acknowledge and appreciate the eight-hour day that has been voluntarily granted, and we will do our best to increase the quantity and quality of the factory output,[3]

Another concern advertises:

Satisfied labor is the one big key to industrial success. The . . . . Terminal conduces to success because the conditions under which the operatives in its many prominent factories perform their tasks make

[1] White, *Seven Great Statesmen*, Cavour, p. 350.

[2] See chapter XXI, *Law and Order in Industry*, by the author.

[3] *Literary Digest*, Nov. 4, 1916.

for perfect sanitation, incomparable light, air, health and safety, and because the location is accessible, at a five-cent fare, from all parts of the city. Modern housing facilities are keeping pace with the industrial development.[1]

Obviously, there is no condition of satisfied labor if the desire to organize is thwarted by the employer. Obviously, there is no condition of satisfied labor if the employer's aim for efficiency and discipline is thwarted by syndicalized workers. There are two blades to the shears, as Dr. Adler observed. The way out is for each to recognize that his right is right only in relation to the other's right.

Each side must yield a bit in its antagonism to the other's position. We cannot permit society to remain in a condition of armed industrial truce. Business efficiency and industrial justice are coadjutors in the task of developing a new industrial law.

## VIII

There are, of course, certain fundamental principles applicable to all industrial controversy. Without attempting to state even the main points, it may help the argument if I roughly formulate a few:

I. The principle of the recognition of the human rights of workers, including:

(a) The right to organize.
(b) The right to living conditions.
(c) The right to be respected in one's personality.

II. The principle that, in the present order of society, the employer must maintain discipline and efficiency in the plant. I and II were excellently stated by the mayor's council of conciliation in the cloak industry:

That the principle of industrial efficiency and that of respect for the essential human rights of the workers should always be applied jointly, priority being assigned to neither. Industrial efficiency may not be sacrificed to the interests of the workers, for how can it be to

[1] *New York Times*, Nov. 7, 1916.

their interest to destroy the business on which they depend for a living? Nor may efficiency be declared paramount to the human rights of the workers, for how in the long run can the industrial efficiency of a country be maintained if the human values of its workers are diminished or destroyed? The delicate adjustment required to reconcile the two principles named must be made. Peace and progress depend upon complete loyalty in the effort to reconcile them.[1]

III. The principle that coercion of neutrals or third parties (destruction of the milk supply, interrupting the public service —the mails, the telegraph, the trains) must not be permitted.

In the application of these principles, we have seen that, in the case of railroads, telegraphs, electric light, steamboats, *etc.*, the power of the states to regulate public utilities and the power of Congress to regulate commerce furnish a legal basis for the establishment of institutions or tribunals or the grant of power to existing bodies. The transmission of the public mails justifies federal intervention.[2] On the other hand, we must, for the present at all events, formulate our legislative program in the matter of so-called "private industries" upon the legal principle of conserving the public health. How far this domain will extend remains still to be developed from the interpretations we shall receive from the United States Supreme Court in such cases as the national child-labor law.

With this in mind, the proposal which I submitted to the federal industrial relations commission in 1914 and which is discussed in another place[3] is here added as an appendix, to furnish a basis for further criticism and discussion.

## IX

In general, the proposal is a League to Enforce Industrial Peace made up of all the elements of society—the consumer, the neutral, the worker and the employer (*i. e.* the state itself), founded upon the following propositions:

[1] *Law and Order in Industry*, by the author, p. 281.

[2] See *In re Debs*, 158 U. S. 564.

[3] See chapter XXI, A Federal Industrial Council, *Law and Order in Industry*, by the author.

I. The clear recognition of the moral and legal right of men to organize.

II. The establishment of tribunals sanctioned by law, whose membership shall be representative of all three parties (employees, employers and the public).

III. The creation of fact-gathering machinery to enable such tribunals to determine what is in any given case a "fair and reasonable wage" and what are "fair and reasonable working conditions."

IV. The clear recognition of the necessity for efficiency and discipline in all industrial organizations.

V. Opportunity to every worker to secure just redress from arbitrary or oppressive exercise of the employer's functions.

VI. Opportunity to every employer to secure just redress from arbitrary or oppressive exercise of power by the men.

VII. The right to appear by a chosen organization or spokesman before all sanctioned tribunals and in all dealings between employers and employees.

VIII. The registration of all collective agreements.

IX. A national council, without whose sanction there shall be no concerted cessation of work or closing-down of plants, to which any interested party may apply for relief, as it may in public service matters to the interstate commerce commission or the public service commissions, or, in trade matters, to the federal trade commission.

X. Such national council to be constituted of members elected from groups of employers and groups of workers and representatives of the public.

XI. In public utilities, clear recognition of the function of the state, as part of the regulation of the service and the rates, to determine what is a reasonable wage and what are reasonable working conditions.

XII. Clear acceptance of the proposition that, adequate mochinery being established for the redress of all just grievances, the right to *coerce* by concerted stoppage of work in all service affecting the public health, safety or convenience shall be made as obsolete as the duel or as illegal as lynching.

(This principle to be applied if and when such machinery is established.)

## X

The basis of the great industrial compromise is here. The trade unionist must yield in his opposition to governmental regulation of his organization; the employer must yield in his opposition to the organization of trade unions; the public must yield in its indifference to the conditions under which human work is done; the business man must yield in his opposition to "social uplift" in industry; and the social reformer must yield in his indifference to efficiency and discipline in modern production. Upon such a compromise can be founded a program of preparedness for peace. Without it, we shall have neither industrial efficiency nor industrial justice. Without legal sanctions, there can be no real progress. But the legal sanctions must be of a kind to which a modern democratic society founded upon a philosophy of reason—not of force—is ready and willing to give whole-hearted and devoted support. The lawyer's duty is big. The educator's duty is bigger, more immediate and more pressing.

## APPENDIX

### Skeleton Outline of Provisions of a Bill

I. Create a *National Industrial Board* with powers analogous to those of the English Industrial Council under the English Trade Disputes Act.

II. Equal representation to organized labor, organized employers, and the public, appointed by the President for long terms.

III. Adequate salary paid to the chairman (to be a man of the type of Sir George Askwith).

IV. In addition to the powers included in the English Trade Disputes Act, give power:

(a) To consider and investigate all matters concerning sanitation and safety.

(b) To revise trade agreements upon the appeal of the parties.

(c) To hear appeals from boards of conciliation or arbitration established under trade agreements.

(d) To gather statistics upon all matters involving wage increase.

V. All trade agreements to be validated by registration with the National Industrial Board.

VI. Whenever it shall appear that the agreement covers a substantial portion of the industry, the parties to the agreement may apply for its extension to the entire industry. Upon proper hearings, to those not yet affected, the industrial board may make an order extending the agreement to cover the entire industry.

VII. Trade agreements to be authorized which may provide for the preferential employment of members of the trade-union party to the agreement, and for wage-scale boards, boards of conciliation and arbitration, grievance boards, boards of sanitary control, boards of apprentices, *etc.*

VIII. The National Industrial Board, before registering any trade agreement, to make careful investigation of the surrounding facts, and if it finds that the agreement is made in good faith, and is for the best interests of the working people and the employers in the industry, it may certify to the fact, and its certificate shall raise an irrebuttable presumption in any court of law or equity that such agreement was in fact entered into in good faith, and not in restraint of trade.

IX. Where agreements create methods of arbitration by boards of arbitration, conciliation, grievances, or the like, the decision in writing of such board may be filed in the office of the clerk of any federal court, and a motion may be made to confirm the report on notice to the party against whom the decision has been rendered, and when such decision shall be confirmed, a copy of the decree may be entered in the clerk's office.

X. An appeal may be taken from any award by a board of arbitration to the National Industrial Board.

XI. Where any agreement voluntarily entered into provides methods of arbitration or conciliation, it shall be lawful for either party to terminate the same, upon three months' notice, but if not terminated, it shall not be lawful for either party to engage in any strike, walkout, or lockout before the controversy is submitted to such tribunal.